

**State of Minnesota  
Department of Commerce**

**Bulletin 2008-1**

**Issued on March 11, 2008**

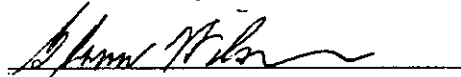
**To:** All Property and Casualty Insurers Writing Commercial Lines Insurance Products and All Advisory Organizations

**From:** Minnesota Department of Commerce, Insurance Product Filing and Securities Registration Section

**Re:** Filing Procedures for Compliance With the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007

**Reason for Bulletin**

This Document is based on the National Association of Insurance Commissioners' Fourth Model Terrorism Bulletin adopted December 19, 2007. It is being distributed to identify Minnesota specific information, which is indicated by bold face type. The Minnesota Department of Commerce hereby issues Bulletin 2008-1 to replace its Bulletin 2006-1, which expired on December 31, 2007 with the passage of the Terrorism Risk Insurance Program Reauthorization Act of 2007.



GLENN WILSON  
Commissioner of Commerce

**Background**

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the tragic events, many reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. As a result, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 (The Act). This federal law provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act was extended for a two-

year period covering Program Years 2006 and 2007. The Act has now been extended for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007.

Several provisions of the initial Act have changed in the 2007 extension. Those changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) are acting on behalf of any foreign person or foreign interest.
- Extending the program through December 31, 2014.
- Requiring clear and conspicuous notice to policyholders of the existence of the \$100,000,000,000 cap.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurers deductibles.
- Fixing the program trigger at \$100,000,000 for all additional program years.
- Requiring the U.S. Department of the Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program when insured losses exceed \$100,000,000,000.
- Requiring the Comptroller General to study the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials and issue a report not later than one year after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Requiring the Comptroller General to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism insurance available and issue a report not later than 180 days after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Requiring the President's Working Group on Financial Markets to continue an ongoing study of the long-term availability and affordability of terrorism risk insurance.
- Accelerating the timing of the mandatory recoupment of the federal share through policyholders surcharges.

Other terms of the Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

The intent of this bulletin is to advise you of certain provisions of the Act, as extended, that may require insurers to submit a filing in Minnesota of the disclosure notices, policy language and the applicable rates as a result of the Act.

### Definition of Act of Terrorism

One of the changes made to TRIA with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a revision of the definition of an act of terrorism that eliminated the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that acts formerly referred to as "domestic" terrorism may now be certified as an act of terrorism under TRIA.

Section 102(1) defines an *act of terrorism* for purposes of the Act. Please note that the unmodified reference to "the Secretary" refers to the Secretary of the Treasury. The revised Section 102(1)(A) states,

“The term “act of terrorism” means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States – (i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to – (I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of – (I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.” Section 102(1)(B) states, “No act shall be certified by the Secretary as an act of terrorism if – (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.” Section 102(1)(C) and (D) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

The Terrorism Risk Insurance Act, as amended, contains in Section 103(1)(B) a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

#### Submission of Rates, Policy Form Language and Disclosure Notices

The filing requirements described in this section do not apply to commercial lines of insurance that are exempt from filing requirements under Minnesota Rules Parts 2700.2460 – 2700.2480 (see Department of Commerce Bulletin 95-2).

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover *certified losses*. Minnesota will accept filings that contain a specified percentage of premium to provide for coverage for *certified losses*. Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. For the convenience of insurers, Minnesota will waive its requirements for supporting documentation for rates for *certified losses* for filings that apply an increased premium charge of between 0% and 10% and do not vary by application of other rating factors.

Insurers subject to policy form regulation must submit the policy language that they intend to use in Minnesota. The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended, state law and the guidance provided in this bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy. Insurers may conclude that current filings are in compliance with the Act, as amended, state law and the requirements

of this bulletin. However, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, it is likely that a filing is required.

Another change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers must now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2), at the time of offer, purchase and renewal of the policy.

Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed \$100,000,000,000 in the aggregate.

The Commissioner requests that the disclosure notices be filed for informational purposes, along with the policy forms, rates and rating systems, as they are an integral part of the process for notification of policyholders in Minnesota and should be clear and not misleading to business owners in Minnesota. The disclosures should comply with the requirements of the Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, Minnesota will permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the commissioner or waiving for the statutory 60-day approval period to expire.

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of Minnesota. Completion of the Expedited Filing Transmittal will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany filings.

In light of the Interim Guidance provided by the Department of the Treasury in the *Federal Register* (Jan. 28, 2008), this voluntary expedited filing system shall remain in place through March 30, 2008. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to March 31, 2008) then it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiving period.

#### Minnesota Standard Fire Policy Provision

Minnesota Statutes § 65A.01, subd. 3 states that an insurer “shall not be liable for loss by fire or other perils insured against in a commercial policy caused, directly or indirectly, by terrorism, unless an endorsement specifically assuming coverage for loss or damage caused by terrorism is attached to the policy.”

#### Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2014, unless Congress extends the duration of the Act. The expedited filing procedures discussed in this bulletin shall expire at midnight on March 30, 2008.

### Contact

Workers' Compensation-related questions regarding this Bulletin should be directed to Ms. Tammy Lohmann at (651) 296-2327. All other questions regarding this Bulletin should be directed to Ms. Joni J. Proffitt at (651) 296-6944.